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C O N F I D E N T I A L SECTION 01 OF 03 BRATISLAVA 000472

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SUBJECT: "THE PRIVATIZATION OF JUSTICE IN SLOVAKIA"

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REASON: 1.4 (b), (d)
Summary

¶1. (SBU) The effects of Stefan Harabin's consolidation of judicial power can be seen in several recent administrative decisions on promotions and public disclosure, and in court rulings on civil cases. This cable outlines a specific instance of each of these three phenomena. Slavomir Cimerman, a district judge with a troubled history that includes well-substantiated allegations of criminal misconduct, has been named to head his district court, while a rival has been suspended and subjected to questionable disciplinary proceedings. Two recent administrative decisions have dealt a blow to transparency of court proceedings: the muzzling of Constitutional Court judges and the removal of all substantive detail from the public records of Judicial Council proceedings. Finally, an important property rights case has been decided in such a way that legal analysts are left wondering what--if any--legal criteria will determine future decisions. The managing partner of one of the major law firms here has described what is happening as "the privatization of justice in Slovakia," in which court proceedings have become a pure contest of vested interests. End summary.

Profound Politicization -----

¶2. (SBU) As reported previously, Slovakia's judiciary is in the midst of a profound politicization (reftels). The ascension of Stefan Harabin from Minister of Justice to President of the Supreme Court, the misuse of disciplinary panels against judges, and the replacement of Slovakia's more competent and independently minded judges with politically (and otherwise) malleable ones have worrisome implications for both the management of the judiciary and the decisions coming out of Slovak courts. This cable will look at concrete examples of the recent administrative and legal decisions coming from the judiciary under the new regime.

Questionable Promotions and Demotions -----

¶3. (SBU) Among a number of questionable promotions and demotions, the case of Judge Slavomir Cimerman may be the most egregious. Cimerman has been nominated to head the Velky Krtis District Court, despite his having been brought up for

disciplinary action several times in the past 10 years as well as having narrowly escaped criminal prosecution. According to police reports, Cimerman was suspected of falsifying documents in several probate cases, in one instance adding text to a court document after it had been signed. In each of these cases, assets of the deceased passed to recipients other than beneficiaries named in the pertinent wills. Over the same period, Cimerman's personal wealth is reported to have increased significantly. He has been able to take overseas holidays, purchase new cars (including an Audi A8) and a couple of new houses (with tennis courts), all on his judge's salary of roughly EUR 430 per month. In 2000, 23 of Cimerman's colleagues signed a petition against his nomination to head the district court, citing concern over his "moral and professional abilities."

14. (SBU) The police and prosecutors eventually initiated criminal proceedings against Cimerman, and the process got as far as the Constitutional Court, which must approve criminal cases against sitting judges. After several years of investigation, the Constitutional Court in 2007 disapproved criminal prosecution of Cimerman, citing a law that no judge can be prosecuted for his or her "decision making." This law is intended as a hedge against Executive branch interference in a judge's legitimate decision making, and the Constitutional Court has previously allowed criminal prosecution against judges who have abused their power. In Cimerman's case, though, there are no reports of Executive interference, and it is widely assumed in legal circles that the court intervened at the behest of Harabin, then Minister of Justice.

15. (SBU) One significant factor in Cimerman's exoneration and promotion is the role of Milan Lalik, Vice Chair of the Constitutional Court and a key figure in the network of judges who are seen as actively advancing Harabin's consolidation of power within the judiciary. Lalik had supported earlier promotions for Cimerman (including a temporary assignment to the Supreme Court while he was on suspension) and eventually nominated him to head the Velky Krtis District Court.

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16. (SBU) Interestingly, Cimerman's would-be nemesis and former head of the Velky Krtis court, Judge Milan Ruzicka, has recently been suspended by a disciplinary panel (suspension in this case means reduction of salary by two-thirds and banishment from the court building). Ruzicka had been trying for years to remove Cimerman from the court, acting on the complaints of the victims of his famously arbitrary rulings. The reason for Ruzicka's suspension? Alleged delays in court proceedings, which many observers consider not to be a valid basis for suspension. Ruzicka is one of three judges, all of them outspoken critics of Harabin, to have been disciplined recently for delays. Ruzicka is so far the only judge suspended for delays; other disciplinary cases for delays of similar lengths have produced only reprimands or no action at all. In addition to questions about the validity of the legal cause for suspension, there are credible allegations that at least some of the evidence against Ruzicka was fabricated.

Making Judicial Information Less Available

17. (U) The public accountability of Slovak courts is already problematic, complicated by the lack of enforceable access to court decisions. Courts often dismiss requests from the public for details on a given decision, claiming that only the parties to the case have a right to that information. Another set of recent decisions has curtailed even more the public availability of information on court proceedings.

18. (U) Two of Slovakia's highest judicial institutions have recently changed their information policies to further restrict public access to information. The Constitutional Court has adopted a new set of rules prohibiting judges and employees of

the court from providing to any third party any information, statements, commentaries, opinions, evaluations, or analysis in any form on any issue (i.e., the restriction applies not only to commentary on particular cases but to any commentary on the judiciary). The Chair and Vice Chair of the Constitutional Court reserve the right of public comment exclusively for themselves. The media have heavily criticized the new rules as unconstitutional and inconsistent with prevailing standards within the EU, where judges are generally free to provide information about court operations in general and even about particular court decisions.

¶9. (SBU) A similar contraction in accessibility of information has been noticed in the Judicial Council, the body that appoints, promotes, and disciplines judges and rules on procedural matters. Minutes of the Council, available on its website, are the only publicly available source of information on its proceedings. Since Harabin ascended to leadership of the Council (by virtue of his election to Presidency of the Supreme Court), the structure of the minutes has changed dramatically. Now, rather than containing a summary of the Council's deliberations with statements and opinions of the members, the minutes contain only the final results of the discussions, with no insight into the interplay of reasoning among its members.

An Odd Decision about Water

¶10. (SBU) One recent corporate case illustrates the legal unpredictability of decisions coming from Slovak courts these days as well as the disturbing personal connections that suggest a logic behind the decisions. Libor Jaksik, a perennial on unofficial lists of Slovakia's mafia leaders, recently won a case over the troubled mineral water company Miticka. Jaksik's company, Mineral Invod, had taken out a bank loan for EUR 830,000 in the mid-1990s to start operation of a factory to process and bottle water. The company never managed to put the factory into operation and eventually lost its spring and the surrounding real estate in a dissolution proceeding in the mid-1990s. The company was dissolved and the loan was never repaid.

¶11. (U) In 2000, Jaksik claimed that the papers dissolving his company five years earlier had not been properly delivered, and he requested that the company be reconstituted. This request was granted by a 2001 court decision that came into effect in 2004, whereupon Jaksik petitioned for Mineral Invod's real property. This request would appear to have been complicated by the fact that the land had in the meantime been acquired by another company (Slovintegra, owned by Slavomir Hatina), which had invested tens of millions of euros in buildings and other fixed capital improvements.

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¶12. (U) Last year, however, the land was awarded to Mineral Invod with no compensation to the new owners. In October of this year, the courts awarded Mineral Invod Slovinintegra's buildings as well, again with no compensation. As for the old debt, the statute of limitations has expired and Jaksik's company has no recognized liability.

¶13. (SBU) Several aspects of the Miticka case puzzle legal experts here. First is the unprecedented step of reinstating a dissolved company. Ordinarily, corporate dissolution is final, and the dissolved entity has no way of coming back into existence. Even more puzzling is the court's decision to give the reinstated entity its property back, with no regard to compensating those who have acquired the assets. The same holds even more true of the capital improvements, which were never part of Mineral Invod's assets.

¶14. (C/NF) Both parties in the case have influential political connections, though the connections are both more compelling and

more suspicious on the Jaksik side. Marian Kosut, who represented Jaksik's firm, is an old friend of Harabin's who worked as the head of Harabin's secretariat at the Ministry of Justice. As for the Jaksiks themselves, they are the targets of criminal investigations here and in the U.S. In addition to their suspected ties to the mafia, they are known to have good relations with many members of the Prime Minister's party Smer.

¶15. (SBU) As a result of these ties, the Jaksiks recently gained a nine-year, 11-month lease on a lucrative Bratislava restaurant (located on municipal property) for the nominal sum of 3333 euro. When a local councilman complained that this decision had been made without consulting the town council, he received a threatening phone call and his car was torched the following day (police are still investigating).

Comment

¶16. (C) Up to now, the consolidation of judicial power under Stefan Harabin has concerned limited circles of Slovak society: the media, political analysts, and civil society groups that follow judicial and governance issues. As witnessed in last month's petition against the "atmosphere of fear" within the judiciary (ref B), signed by over 100 sitting judges, serious concern has now spread more broadly within the judiciary. And the results of Harabin's power grab are becoming clearer: a less transparent and more autocratic judicial branch (starting from an admittedly nontransparent and autocratic baseline). There is a growing perception that the judiciary advances those who are willing to go along with the leadership and punishes those who are not, and delivers unpredictable--sometimes insupportable--legal judgments. Given the deliberate independence of the judiciary, it is difficult to see what could reverse, or even slow, the present trend.

¶17. (C) A recent conversation with a leading U.S. corporate law firm here captured the extent of the worry. The senior partners, all of whom have long practiced law internationally as well as in Slovakia, described what is happening as "the privatization of justice in Slovakia." One partner said he is seeing "the complete abandonment of the search for truth" in Slovak courtrooms, leaving only a war of financial interests, vying with one another to bid up the price--the monetary price--of a favorable judgment. Six months ago, this firm was abstractly concerned about Harabin's moves in the judiciary but had few doubts that it could get a fair judgment here; that is not the case today. Now the firm is actively working to ensure that its clients avoid having anything adjudicated in Slovakia.

EDDINS